

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0087**

**RESPONSIBLE OFFICER
SALES TAX and WITHHOLDING TAX
For Tax Period 1987-1991**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

Issue

Sales and Withholding Tax -Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8 (f), IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

Statement of Facts

The taxpayer was an officer of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 1987-1991. After the taxpayer was personally assessed for the taxes, penalties and interest, he filed a protest. A hearing was scheduled for April 28, 2005. The taxpayer did not appear for the hearing. Therefore, this Letter of Findings is based upon the documentation in the file.

Sales and Withholding Tax-Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer admitted that he was the party responsible for the remittance of sales and withholding taxes to the state. He protested the amount of the tax liability as assessed by the Indiana Department of Revenue. He failed, however, to provide any documentation to demonstrate that the assessments were incorrect. Therefore, he did not sustain his burden of proof.

Finding

The taxpayer’s protest is denied.

KMA/JMM/JMS/05/12/05